



# Bargaining Over Procedures and Appropriate Arrangements

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# Is there a Duty to Bargain?

- Does the change concern conditions of employment?
- Does the change affect bargaining unit employees?
- Does the change involve the exercise of a management right under 7106(a) or 7106(b)(1)?

# De Minimis Change

- Management is not obligated to bargain over a change in employees' conditions of employment if the change is de minimis.
  - changes that are substantively negotiable
  - changes that result from the exercise of a management right

397 F. 3d 957 (D.C. Cir. 2005) upholding 59 FLRA 646
- De minimis determinations consider the nature and extent of the effect, or reasonably foreseeable effect, of the change.

58 FLRA 750

# Covered By Doctrine

- Management is not required to bargain over a matter that is already “covered by” a negotiated agreement.

47 FLRA 1004

# Duty to Bargain Over Procedures and Appropriate Arrangements

- Procedures used to exercise a reserved management right under 7106(a) or 7106(b)(1). (7106(b)(2))
- “Appropriate arrangements” for employees adversely affected by the exercise of a reserved management right.  
(7106(b)(3))

# Advance Notice Requirement

- Management must provide reasonable notice and an opportunity to request bargaining.  
62 FLRA 341
  - collective bargaining agreement may define the notice period  
52 FLRA 256
- Maintain status quo until bargaining is completed.

# Procedures

- Does the proposal prevent Management from “acting at all”?

801 F. 2d 477 (D.C. Cir 1986)

- procedures which would merely delay the exercise of management’s rights are negotiable.

22 FLRA 1071

- Does the proposal directly interfere with a management right?



# Direct Interference Test

- Does the proposal specify the criteria Management must follow when exercising its management's rights?
- If a proposed procedure is found to directly interfere with management's rights, it may be considered an appropriate arrangement.



# Appropriate Arrangements

- Is the proposal intended to be an arrangement for employees adversely affected by the exercise of management's rights?
  - which management right is being exercised?
  - what are the adverse effects or foreseeable adverse effects?

56 FLRA 787
  - how will the proposal address or compensate for actual or anticipated adverse effects?
- Is the arrangement “appropriate”?

# Excessive Interference Test

- Does the proposal excessively interfere with management's rights?
  - which conditions of employment are affected, and to what degree?
  - to what extent are the circumstances giving rise to the adverse effects within the employees' control?

# Excessive Interference Test

- what is the nature and extent of the impact of the proposal on Management's ability to exercise the affected management right(s)?
- is the negative impact upon Management's right to act disproportionate to the benefit to be derived from the arrangement?
- what effect will the proposal have on effective and efficient government operations?

819 F.2<sup>nd</sup> 306 (DC Cir, 1987)



# Negotiating over Procedures and Appropriate Arrangements

- Anticipate union interests/concerns
- Anticipate the information request
- Identify Management's interests/concerns
- Identify bargaining parameters and options
- Research third party decisions
- Keep an open mind



## E.O. 13522 and Bargaining over Procedures and Appropriate Arrangements

- Procedures and appropriate arrangements may initially be addressed, discussed, and developed through pre-decisional involvement.
- Does not necessarily preclude subsequent bargaining.



**Questions?**